IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Second Appeal No.1185 of 2005

Krishnakant Ramnath Thakur ..Appellant

vs.

1. Maniram Nagu (Naga) Thakur
and another ..Respondents

Ms.Gouri Godse for appellant.
None for respondents.

CORAM: S.C.DHARMADHIKARI J.
11th July, 2007

P.C.

1. Heard Ms.Godse appearing for the appellant/original plaintiff.

2. On 18th August, 2004, the appellant/original plaintiff's Special Civil Suit No.101 of 2000 was dismissed by Civil Judge, Sr.Dn., Panvel. That order was challenged in First Appeal before the lower Appellate Court and Civil Appeal No.154 of 2004 has been dismissed on 21st April, 2005.

3. Against the concurrent judgments the present second appeal has been filed.

4. The only contention raised by Ms.Godse is that the

Appellant/original plaintiff has filed the above suit against Maniram for relief of damages, cancellation of decree passed in Reg.Civil Suit No.31 of 1991 and for mandatory injunction/possession. The suit was instituted on the basis that Maniram obtained a decree for possession in Reg.Civil Suit No.31 of 1991 in respect of an Immovable property, part of which (Survey No.13/6 (part) was acquired by the State Government under Land Acquisition Act, 1894 for a public purpose. However, Maniram had never pointed out and rather suppressed this fact from all Courts which were concerned with the said matter. Therefore, the decree does not bind the Appellant in sofar as his house property is concerned. In other words, the house property of the appellant/plaintiff on this land should not have been touched leave alone demolished in execution of the decree passed in favour of Manilal. That having been done, in the instant case, the Courts below were obliged to decree the suit of the present appellant and award him compensation as also other reliefs by holding that the decree in favour of Maniram does not bind the appellant/original plaintiff atleast to the extent of this property.

5. In support of her contention that fraud has been played upon the Trial Court by suppressing the fact of

acquisition, Ms.Godse relied upon the judgment of the Supreme Court in the case of S.P.Chengalvaraya Naidu (dead) by LRs Vs.Jagannath (dead) by LRs and others reported in A.I.R.1994 S.C.853 wherein His Lordship Shri Justice Kuldip Singh (as His Lordship then was) has observed as under:

> "7. .....The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.
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> "8.....A litigant, who approaches the court, is

bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the court as well as on the opposite party."

6. I am unable to accept these contentions of Ms.Godse in as much as concurrent findings of fact have been rendered based upon the material produced by the appellant/plaintiff. In para 9 of the Trial Court's order it has been observed that the land Survey No.13/6(2) of village Dhasakoshi has been acquired by the State of Maharashtra. That portion admeasures 4.5 R and remaining part of 10.1 R is in possession of defendant no.1 Maniram. The extract of 7/12 with regard to the acquired land was produced. If it was true that the building/structure of the present appellant/plaintiff was on the acquired portion of the land then during the course of the acquisition proceedings, the Special Land Acquisition Officer would have definitely given a notice to the structure holder/owner and paid compensation as well with regard to the structure. However, there is no material produced to show that the structure was in fact standing on the acquired land. Inference drawn by the Trial Court

on the basis of the material produced and also on the basis of the proceedings of acquisition to the effect that the land was vacant and there was no house thereon cannot be said to be perverse or vitiated in any manner. The findings rendered are consistent with the oral and documentary evidence on record.

7. Even before the lower Appellate Court this aspect was highlighted. The lower Appellate Court has in very clear terms in para 6 of the impugned order observed that the statement of the present appellant/plaintiff stands falsified against other evidence. For the above reasons the judgment of the Hon'ble Supreme Court is not applicable to the facts of the case as this is not a case of established fraud.

8. In my view, these are clear findings of fact which have been rendered consistent with the oral and documentary evidence on record. No substantial question of law arises for consideration in this second appeal. This Court cannot in its jurisdiction under sec.100 of Code of Civil Procedure reappreciate and reappraise the material. Consequently, the second appeal fails and is summarily dismissed.

(S.C.DHARMADHIKARI J.)